IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 459 OF 1999
IN
NOTICE OF MOTION NO.42 OF 1998
IN
SUIT NO.4136 OF 1997

Mrs.Uma Gangadhar Gandhi,
of Bombay, Indian Inhabitant,
residing at 184-A/6699,
Kannamwar Nagar II, Vikhroli (East),
Bombay-400 083. .. Appellant
(Orig.Plaintiff)

v/s.

1. Smt.Akubai Keru Patil.

2. Baban Keru Patil.

3. Dilip Keru Patil
Defendant Nos.1 to 3 of
Indian Inhabitants residing
at Mohamed Mension, Room No.18,
1st floor, Gokhale Road, Dadar,
Bombay-400 028,

Defendant Nos.1 to 3 being heirs
and legal representatives of
late Keru Pandurang Patil.

4. Wooden Boxes Manufacturers Co-op.
Industrial Estate Ltd., a society
duly registered under the
Maharashtra Co-op. Society Act,
1960 and having its address as
C/o. Chavan Packaging Pvt.Ltd.,
Devkaran Mension Chowk, Princess
Street, Bombay-400 002.

5. M/s. Sai Developers, having
their address as C/o. D.K.Patel
& Co., 23, Kailash Nagar,
M.G.Road, Ghatkopar (East),
Bombay-400 077.

6. Mahendrakumar Nemichand Bafna
of Bombay, Indian Inhabitant
having his address as Laxmi
Trading Link, 92/94, Kika
Street, 1st floor, Mumbai-400002. ..Respondents
(Orig.Defendants)

Mr.Bajpai with Mr.Suhas Patil i/by Mr.N.K.Mudnaney for appellant.

Ms.A.D.Shah with Mr.K.D.Shah for respondent Nos.1 to 3.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 24th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr. Bajpai, the learned counsel for the appellant.

2. The learned motion Judge refused to grant interim relief to the present appellant-original plaintiff. The plaintiff prayed for an appointment of Court Receiver to take charge of the right of the deceased vendor to the gala admeasuring 13 ft. x 56.75 ft. on the ground floor of the building under construction and plot bearing survey No.136 (part), City Survey No.1, Lake Ghat, Ghatkopar (West), Mumbai and for injunction against the defendant No.6 from disposing of, transferring, alienating his membership rights or right to allotment of a gala under construction until disposal of the suit and for injunction against defendant Nos.4 and 5 from parting with the possession of the gala to defendant No.6. The plaintiff claim is based on an agreement for sale dated 6.9.1994 said to have been executed by one Mr. Keru Pandurang Patil (deceased). The plaintiff has filed the suit for the specific performance of that agreement and also prayed for

declaration that the transfer of rights by Mr.Keru Pandurang Patil (since deceased) in respect of the subject gala in favour of defendant No.6 was null and void. Certain incidental reliefs have also been prayed for by the original plaintiff. The defendant Nos.1 to 3 are the legal heirs of the deceased Keru Pandurang Patil. The defendant No.4 is the society and the defendant No.5 is the developer. The defendant No.6 is the purchaser of the rights of the deceased to the allotment of the subject gala and its shares. It is not in dispute that the plaintiff's application for membership of the society stands rejected. It is also not in dispute that the plaintiff has not been inducted as member of the society. It is also admitted fact that the defendant No.6 has been admitted as the member of the society with effect from 8th April, 1995. Prima facie, therefore, it cannot be said that the plaintiff has been able to make out a prima facie case particularly in situation like this where galas have not been constructed completely. The learned motion Judge has gone into the matter at some length and we find ourselves in agreement with the consideration of the matter by the learned motion Judge. In view thereof, we do not deem it necessary to deal with the matter at length. Suffice it to observe that for the reasons recorded by the learned motion Judge with which we find ourselves in agreement, the plaintiff has not

been able to make out a case for grant of interim relief. The impugned order does not call for any interference.

3. The appeal fails and is dismissed accordingly. The interim order stands discharged.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)